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Milton S. Sales
Patent Legal Staff
Eastman Kodak Company
343 State Street
Rochester, NY 14650-2201

EXAMINER

HARPER, LEON JONATHAN

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DALE F. MCINTYRE and ANDREW T. COOPER

Appeal 2008-003897
Application 10/071,590
Technology Center 2100

Decided¹: June 24, 2009

Before JAMES D. THOMAS, LANCE LEONARD BARRY, and THU A.
DANG, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date.

STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-11 and 14-16. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

INVENTION

The invention at issue on appeal automatically updates non-image metadata stored at a first location using a first image application. The metadata are associated with a digital image of a user. More specifically, the invention provides new information regarding the digital image in a second image application and automatically updates the metadata at the first location to reflect the new information. (Spec. 20.)

ILLUSTRATIVE CLAIM

10. A method for updating non-image information stored at a first location, said non-image information being associated with a digital image of a user, comprising steps of:

- providing at least one digital image of a user to a remote image server;

- said user granting access to at least one third party to said at least one digital image stored at said remote image server;

- said third party providing new non-image information with respect to said at least one digital image in a second non-related image software application running at said remote image server;

- notifying said user of the existence of said new non-image information with respect to said at least one digital image; and

automatically updating said non-image information at said first location with said new non-image information if said user decides to do so.

PRIOR ART

Houchin et al.	US 5,983,229	Nov. 9, 1999
Parks et al.	US 5,025,396	June 18, 1991

REJECTION

Claims 1-11 and 14-16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Houchin and Parks.

CLAIM GROUPING

When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.

37 C.F.R. § 41.37(c)(1)(vii).

Here, the Appellants argue claims 1-7, 14, and 15 as a group (2d Supp. Br. 13-14) and claims 8, 9, and 16 as another group (*id.* 6-8). All these claims are subject to the same ground of rejection. Therefore, we select claims 1 and 16 as the sole claims on which to decide the appeal of the respective groups. "With this representation in mind, rather than reiterate

the positions of the parties *in toto*, we focus on the issues therebetween." *Ex Parte Zettel*, No. 2007-1361, 2007 WL 3114962, at *2 (BPAI 2007).

GRANTING ACCESS, A SECOND NON-RELATED IMAGE
SOFTWARE APPLICATION RUNNING AT THE REMOTE IMAGE
SERVER, AND NOTIFYING A USER

The Examiner makes the following findings.

Houchin discloses that applications can manage image data as well as non-image data across network (See column 1 lines 45-51). Therefore . . . an artisan of ordinary skill in the pertinent art would understand that this also includes image data being accessed or copied by a third party since the purpose of allowing applications to run on a network is to grant access to files and resources not stored locally.

(Ans. 10.)

[A]n application [may] . . . add extension data to the hypothetical image file The new extension data is then added to the buffer in memory per step 46. Finally, the incremented value of the number of extensions field, the buffer of extension data and the extensions offsets are written to the file per step 48 (see col. 3, lines 36-58, Houchin). Moreover, the application is disclosed as running on a remote site for the same reasons as [aforementioned]

(*Id.* at 11.)

Houchin discloses verifying extension data (See figures 3 and 4). An artisan of ordinary skill in the pertinent art would understand that one way of verifying information is to ask the user. Asking the user accomplishes 2 goals (1) users can clear up any errors, if they are the reason the system cannot read data (in this case extension data) and (2) users can verify that the data is in fact not valid.

(*Id.* at 12.) The Appellants make the following arguments. "Houchin fails to teach or suggest at least said user granting access to at least one third

party to said at least one digital image stored at said remote image server . . .
." (2d Supp. Br. 8.) "[N]one of Houchin's embodiments disclose [sic] a
second non-related image software application running on a remote site for
providing non-image information." (*Id.* at 7.) "Houchin discloses that an
application makes decisions (*See* Col. 4, lines 7-10), however, nowhere does
the Houchin device notify a user of the existence of said new non-image
information." (*Id.* at 8.)

ISSUE

Therefore, the issue before us is whether the Appellants have shown
error in the Examiner's findings that Houchin teaches a user granting access
to at least one third party to at least one digital image stored at a remote
image server, a second non-related image software application running at the
remote image server, or notifying the user of the existence of new non-image
information regarding the at least one digital image.

LAW

The question of obviousness is "based on underlying factual
determinations including . . . what th[e] prior art teaches explicitly and
inherently" *In re Zurko*, 258 F.3d 1379, 1383 (Fed. Cir. 2001).
"A *prima facie* case of obviousness is established when the teachings from
the prior art itself would appear to have suggested the claimed subject matter
to a person of ordinary skill in the art." *In re Bell*, 991 F.2d 781, 783 (Fed.
Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051 (CCPA 1976)).
"On appeal to the Board, an applicant can overcome a rejection by showing
insufficient evidence of *prima facie* obviousness or by rebutting the *prima*

facie case with evidence of secondary indicia of nonobviousness.'" *In re Kahn*, 441 F.3d 977, 985-86 (Fed.Cir. 2006) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed.Cir. 1998)).

ANALYSIS

As aforementioned, the Examiner has found that Houchin teaches a user granting access to at least one third party to at least one digital image stored at a remote image server, a second non-related image software application running at the remote image server, and notifying the user of the existence of new non-image information regarding the at least one digital image. These findings establish a *prima facie* case of obviousness. The Appellants have not addressed the Examiner's specific findings.

CONCLUSION

Not having addressed the Examiner's specific findings, the Appellants have shown no error therein.

AUTOMATICALLY UPDATING NON-IMAGE INFORMATION

As aforementioned, the Examiner finds that in Houchin "the buffer of extension data and the extensions offsets are written to the file per step 48 (see col. 3, lines 36-58, Houchin)." (Answer 11.) He further finds that "Parks discloses automatically updating (automatically update the coded data, see col. 10, lines 3-6, Parks)." (*Id.* at 4.) The Appellants argue that "[a]t best, Parks performs a backup is automatically performed. *See* Col. 10, lines 4-5. Nevertheless, Parks does not disclose automatically updating said non-image information at said first storage location." (2d Supp. Br. 14.)

ISSUE

Therefore, the issue before us is whether the Appellants have shown error in the Examiner's finding that the combined teachings of Houchin and Parks would have suggested automatically updating non-image information at a first storage location.

LAW

"The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art." *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)).

FINDINGS OF FACT ("FFs")

1. Houchin "provides a flexible image format (e.g. FlashPix), the ability to manage extension data (additional image, audio, or *non-image data*) that is added to the core image format data by using an extension persistence property." (Col. 2, ll. 18-22 (emphasis added).)

2. The reference's "FIG. 2 depicts the steps an application must take to add extension data to the hypothetical image file." (Col. 3, ll. 36-37.) More specifically, "[t]he new extension data is then added to the buffer in memory per step 46. Finally, the incremented value of the number of extensions field, the buffer of extension data and the extensions offsets are written to the file per step 48." (*Id.* at ll. 54-59.)

3. Houchin also discloses "[a] storage media having stored thereon an image file comprising: a header; image data; *extension data . . .*" (Col. 6, ll. 28-32 (emphasis added).)

4. Parks teaches that "[b]ackup is not required for Coded Data. It is done automatically by [the] O[b]ject Access Method]." (Col. 10, ll. 4-5.)

ANALYSIS

Houchin teaches that software applications can add extension data to image files. (FF 1-2.) The extension data comprise non-image data (FF 1) and are stored in a storage media (FF 3).

Figure 2 of the reference shows that the applications can add the extension data without any input from a user. (FF 2.) Therefore, we agree with the Examiner's finding that "Houchin discloses a method for automatically updating non-image data stored at a first storage location" (Answer 4.) For its part, Parks teaches that an operation that stores data can be performed automatically. (FF 4.)

CONCLUSION

Based on the aforementioned facts and analysis, we conclude that the Appellants have shown no error in the Examiner's finding that the combined teachings of Houchin and Parks would have suggested automatically updating non-image information at a first storage location.

Appeal 2008-003897
Application 10/071,590

DECISION

We affirm the rejection of claims 1-11 and 14-16.

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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Milton S. Sales
Patent Legal Staff
Eastman Kodak Company
343 State Street
Rochester, NY 14650-2201